

D/f

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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TAVITA LEVEQUE,

Plaintiff,

-against-

ORDER
09-CV-3466(SJF) (WDW)

NORTH SHORE L.I.J. HEALTH SYSTEM,

Defendant.

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FEUERSTEIN, J.,

On July 15, 2009, Tavita Leveque (“Plaintiff”) commenced this action alleging she was unlawfully terminated by North Shore L.I.J. Health System (“Defendant”) pursuant to Title VII of the Civil Rights Act of 1964, as codified, 42 U.S.C. §§ 2000e-2000e-17 f. On July 30, 2010, Magistrate Judge Willaim D. Wall issued a discovery scheduling order requiring, *inter alia*, automatic disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure to be made no later than August 13, 2010. On September 27, 2010, Defendant moved to dismiss the complaint as a disciplinary sanction pursuant to Rule 37, on the ground that Plaintiff had not complied with the July 30 discovery order. In an amended order issued on October 14, 2010 (the “Order”), Magistrate Judge Wall denied the motion unopposed, and ordered Plaintiff to provide initial disclosures and respond to Defendant’s demands by November 3, 2010, and informed her that failure to comply with the order “will result in a recommendation to Judge Feuerstein that

the complaint be dismissed with prejudice.” Order at 3.¹ On November 4, 2010, Defendant moved again for dismissal of the action on the basis that Plaintiff had still not complied with the Order and had not contacted Defendant on any matter. On November 5, 2010, Magistrate Judge Wall issued a Report and Recommendation (“the Report”) noting Plaintiff’s history of non-compliance and recommending that the complaint be dismissed with prejudice for failure to obey a discovery order and failure to prosecute pursuant to Rules 37(b)(2)(a)(v) and 41(b) of the Federal Rules of Civil Procedure. There have been no objections filed to date, and no opposition to either of Defendant’s motions.

For the reasons stated herein, the Report is accepted in its entirety.

I. Discussion

Rule 72 of the Federal Rules of Civil Procedure permits magistrate judges to conduct proceedings on dispositive pretrial matters without the consent of the parties. Fed. R. Civ. P. 72(b). Any portion of a report and recommendation on dispositive matters, to which a timely objection has been made, is reviewed de novo. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b). The court, however, is not required to review the factual findings or legal conclusions of the magistrate judge as to which no proper objections are interposed. See Thomas v. Arn, 474 U.S. 140, 150, 106 S.Ct. 466, 88 L.Ed.2d 435 (1985). To accept the report and recommendation of a

¹The initial order issued on October 12, 2010 (D.E. 19) was substantially similar but mistakenly set the new discovery compliance date for November 1, 2011. The Amended order was issued on October 14, 2010 correcting the “typographical error in [the] date” (Order at 1), and was served on October 14, 2010 (*see* D.E. 21).

magistrate judge to which no timely objection has been made, the district judge need only be satisfied that there is no clear error on the face of the record. See Fed. R. Civ. P. 72(b); Baptichon v. Nevada State Bank, 304 F. Supp. 2d 451, 453 (E.D.N.Y. 2004), affd, 125 F. App'x. 374 (2d Cir. 2005); Nelson v. Smith, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985). Whether or not proper objections have been filed, the district judge may, after review, accept, reject, or modify any of the magistrate judge's findings or recommendations. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b).

Upon review, the Court is satisfied that the Report is not facially erroneous. Accordingly, the Court accepts and adopts Magistrate Judge Wall's Report as an Order of the Court.

II. Conclusion

For the foregoing reasons, the Report is accepted in its entirety, Defendant's motion to dismiss the complaint is granted with prejudice.

SO ORDERED.



SANDRA J. ZUERSTEIN
United States District Judge

12/1/10

Dated: December 1, 2010
Central Islip, New York